



National Integrated ICT Policy White Paper

Unpacking the White Paper - Part IV - Rapid Deployment Policy

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The National Integrated ICT Policy White Paper was published 26 September 2016. The White Paper deals with many issues. In this part IV of the series, we will look at the rapid deployment policy, dealing with how licensees acquire rights of ways to construct or install infrastructure.

Background

The Electronic Communications Act (EC Act) grants to all electronic communications network service (ECNS) licensees certain rights regarding access to land, including, inter alia, the following.

- to enter upon any land and construct and maintain facilities, subject to environmental regulations;
- to use underground conduit pipes;
- to construct and maintain facilities under streets, roads and footpaths;
- to place gates on property owners' fences; and
- to cause trees or vegetation to be cut, subject to environmental regulations.

ECNS licensees must exercise their rights in accordance with regulations to be made by ICASA. The Minister of

Telecommunications and Postal Services (MoTaPS) must first develop a policy and policy directions. There still are no policy and policy directions and regulations in line with the EC Act that govern how ECNS licensees exercise their EC Act rights.

The issue of access came before the Constitutional Court in *City of Tshwane Metropolitan Municipality v Link Africa (Pty) Ltd and Others*.¹ The majority in that case came to the conclusion that the rights granted in terms of the EC Act had to be exercised in line with the common law on servitudes, as well as any other applicable law. The court interpreted the EC Act as follows.

1. Licensees get to choose which premises to access.
2. Licensees must exercise their rights in a “civil and reasonable manner”, including giving reasonable notice to the property owner, and consulting with the owner in respect of the manner of access.
3. Compensation in proportion to the advantage gained by the licensee and the disadvantages suffered by the owner, is payable.
4. Where disputes arise about the manner of the licensee exercising its rights or the extent of the compensation payable, these must be determined by way of dispute resolution or by way of adjudication, and access in the absence of resolution will be unlawful.



The court also held that licensees must abide by all relevant laws, including municipal by-laws, the only limit being that by-laws may not require the municipality’s consent. If by-laws exist that regulate the manner in which a licensee may exercise its powers, the licensee must comply.

Rapid Deployment Policy

The ICT White Paper mentions the City of Tshwane court case. It then proceeds to set out a procedure that may not be in line with the decision of the court, especially as it relates to property owners. According to the White Paper, a licensee will give written notice and then the property owner has “limited rights of objection”. The property owner however may object 14 days before the licensee intends to start work and only if the proposed facility with “cause significant interference with the property”. Compensation will be limited, as is the right to object to the manner of access.

The ICT White Paper also recognizes that many governmental approvals are necessary, including town planning approval,

¹ (CCT184/14) [2015] ZACC 29; 2015 (6) SA 440 (CC); 2015 (11) BCLR 1265 (CC) (23 September 2015)

environmental approval, aviation approval and building approval. The White Paper sets out the aspiration that all of these various approvals will be expedited and run concurrently, taking no longer than one month to complete. The White Paper provides for an eventual automated system to work alongside a database of all infrastructure.

Many of these policies set out in the ICT White Paper, of course, rely on a number of intervening regulatory or legislative processes, including the following.

- changes to the EC Act (if the common law of servitudes is to be subordinated, for example)
- adoption of policy and policy directions made in terms of the EC Act
- adoption of regulations made in terms of the EC Act
- amendment or adoption of procedures by municipalities
- amendment or adoption of building regulations by the Minister of Trade and Industry

Other issues dealt with in the ICT White Paper include issues relating to access to high sites, trenches, infrastructure such as roads, pylons, and water and sewer systems. These policies dovetail with the open access policies, which encourage the sharing of facilities.

The ICT White Paper also sets out policies for the deployment of facilities in new developments. The White Paper calls upon the Minister to lease with the Minister of Trade and Industry to amend the national building regulations to establish a requirement for new development and renovation plans include plans for ICT infrastructure. The White Paper also outlines a process to reduce exclusive arrangements between licensees and land owners.

Institutions and Responsibilities

Finally, to implement the Rapid Deployment Policy, it is anticipated that the following entities will have the following responsibilities.



Minister	<ul style="list-style-type: none"> • oversee implementation of policy • liaise with other Ministers • establish National Co-ordinating Centre and Rapid Deployment Steering Committee to oversee Centre activities
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New Economic Regulator	<ul style="list-style-type: none"> • make rapid deployment regulations • liaison between licensees and Centre • make dispute regulations and resolve disputes between licensees and land owners
Government land owners	<ul style="list-style-type: none"> • agree to reasonable compensation • co-ordinate activities of licensees • provide information on infrastructure to Centre • make rules in line with national policy and regulations • include electronic communications infrastructure in development plans
National Co-ordinating Centre / Rapid Deployment Steering Committee	<ul style="list-style-type: none"> • establish common way-leave rules • create GIS database of infrastructure • coordinate infrastructure rollout • engage industry bodies • provide advice to licensees
SALGA and municipalities	<ul style="list-style-type: none"> • approval of way-leaves at cost • include electronic communications infrastructure in development plans • provide information on infrastructure to Centre